MONTANA LEGISLATIVE HISTORY

Chapter 285 1985

Bill H 662 S _____ Original bill & history ✓ C

H. Committee on Business & Labor

Hearing Date(s) 2/13 ___C

_____ ___C

_____ ___C

_____ ___C

Date Out 2/13 ___C

S. Committee on Business + Industry ✓

Hearing Date(s) 3/21 ___C

_____ ___C

_____ ___C

Date out 3/21 ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/21	HEARING		
3/21	COMMITTEE REPORT-BILL CONCURRED		
3/23	2ND READING CONCURRED	49	0
3/26	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 301 EFFECTIVE DATE: 10/01/85		

HB 659 INTRODUCED BY HARPER, ASAY, ET AL.
ENACTING NOXIOUS PLANT MANAGEMENT ACT TO GENERALLY REVISE COUNTY WEED LAWS
BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

2/04	INTRODUCED		
2/04	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/05	FISCAL NOTE REQUESTED		
2/11	FISCAL NOTE RECEIVED		
2/13	HEARING		
	DIED IN COMMITTEE		

HB 660 INTRODUCED BY JACK MOORE, DONALDSON, ET AL.
APPROPRIATION TO UPGRADE SALARY SCHEDULE FOR DEAF AND BLIND SCHOOL

2/04	INTRODUCED		
2/04	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/15	HEARING		
2/19	COMMITTEE REPORT-BILL DO PASS		
2/20	2ND READING PASS	89	8
2/20	REREFERRED TO APPROPRIATIONS		
	DIED IN COMMITTEE		

HB 661 INTRODUCED BY PISTORIA, MCCORMICK, O'CONNELL
REQUIRE INSURANCE CARD TO REGISTER CAR - SUSPENSION OF DRIVER'S LICENSE

2/04	INTRODUCED		
2/04	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/14	HEARING		
	DIED IN COMMITTEE		

HB 662 INTRODUCED BY KEYSER, RAMIREZ, IVERSON
DEFINING SCOPE OF MONTANA SECURITIES LAW
BY REQUEST OF SECURITIES DIVISION

2/04	INTRODUCED		
2/04	REFERRED TO BUSINESS & LABOR		
2/13	HEARING		
2/13	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/16	2ND READING PASS	88	4
2/19	3RD READING PASS	94	5
	TRANSMITTED TO SENATE		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/21	HEARING		

3/21	COMMITTEE REPORT-BILL CONCURRED		
3/23	2ND READING CONCURRED	49	0
3/26	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 285 EFFECTIVE DATE: 4/01/85		

HB 663 INTRODUCED BY JANET MOORE, HARBIN, ET AL.
SEELEY-SWAN SCENIC HIGHWAY; PRESERVE AND ENHANCE SCENIC BEAUTY

2/04	INTRODUCED		
2/04	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/05	FISCAL NOTE REQUESTED		
2/11	FISCAL NOTE RECEIVED		
2/16	HEARING		
2/25	ON MOTION PLACED ON 2ND READING		
2/27	2ND READING DO NOT PASS	67	32
2/27	BILL KILLED		

HB 664 INTRODUCED BY FRITZ, HANSEN, ET AL.
REVISE CHILD ABUSE OR NEGLECT REPORT AND ACCESS TO INFORMATION LAW

2/04	INTRODUCED		
2/04	REFERRED TO JUDICIARY		
2/07	HEARING		
2/08	ADVERSE COMMITTEE REPORT		
2/11	BILL KILLED	68	30

HB 665 INTRODUCED BY KEENAN, JACOBSON, ET AL.
REVISE PROCEDURE FOR TERMINATING PARENT-CHILD RELATIONSHIP

2/04	INTRODUCED		
2/04	REFERRED TO JUDICIARY		
2/22	HEARING		
2/23	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/26	2ND READING PASS	71	26
2/27	3RD READING PASS	80	20
	TRANSMITTED TO SENATE		
3/05	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/20	HEARING		
3/23	COMMITTEE REPORT-BILL CONCURRED		
3/27	2ND READING CONCURRED	49	0
3/29	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/04	SIGNED BY PRESIDENT		
4/04	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 388 EFFECTIVE DATE: 10/01/85		

HOUSE BILL NO. 662

INTRODUCED BY Heyser Ramirez Jr.

BY REQUEST OF THE SECURITIES DIVISION OF THE STATE AUDITOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE SCOPE OF THE SECURITIES ACT OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers are concerned,

INTRODUCED BILL
HB 662

apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 30, chapter 10, parts 1 through 3, and the provisions of Title 30, chapter 10, parts 1 through 3, apply to section 1.

Section 3. Extension of authority. Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. Effective date. This act is effective on passage and approval.

-End-

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

49TH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND LABOR

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
618	2-1	2-13	2-13	2-13					
634	2-2	2-18/2-19	2-19	2-19					
639	2-2	2-8	2-8			2-8			
640	2-2								
646	2-2			RERFERRED TO HUMAN SERVICES					
648	2-2	2-7	2-7	2-7					
649	2-4	2-19/2-23	2-23			2-23	(SUBCOMMITTEE)		
657	2-4	2-20/2-21		TABLED					
658	2-4	2-13	2-13	2-13					
662	2-4	2-13	2-13			2-13			
666	2-4	2-20/2-21		TABLED					
668	2-5	2-15/2-18 2-19		TABLED					
691	2-6	2-15/2-18	2-18		2-18				
694	2-6	2-18/2-19	2-19	2-19					
707	2-7	2-13/2-14 2-20	2-20			2-20			
718	2-8	2-12/2-13	2-13			2-13			

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 13, 1985

The meeting of the House Business and Labor Committee was called to order by Chairman Bob Pavlovich at 7:30 a.m. in Room 312-2 of the Capitol Building.

ROLL CALL: All members of the committee were present.

Chairman Pavlovich asked for motions on bills pending in committee.

HOUSE BILL 309: Rep. Brandewie moved DO PASS on HB 309, and a brief discussion of on-site inspections followed. Rep. Jones made a substitute motion of DO NOT PASS. Chairman Pavlovich suggested that the committee table HB 309 until the Senate acts on SB 189, a related bill. Rep. Jones' motion to table HB 309 carried unanimously.

HOUSE BILL 527: Rep. Simon moved DO PASS on the proposed amendments to HB 527. Rep. Jones made a substitute motion DO NOT PASS on the amendments to HB 527. That motion carried, 11-9. Rep. Jones then moved DO NOT PASS on HB 527. That motion carried 15-5.

HOUSE BILL 485: Rep. Driscoll moved DO PASS On HB 485. Rep. Ellerd made a substitute motion of DO NOT PASS. The bill was killed 11-9.

HOUSE BILL 234: Rep. Driscoll moved DO PASS on HB 234. Rep. Thomas offered a substitute motion of DO NOT PASS, which carried 12-8.

HOUSE BILL 718: Rep. Kitselman asked Tom Schneider, executive director of the Montana Public Employees Association, to explain that organization's stance on HB 718. Mr. Schneider told the committee that MPEA supports HB 718 as a means of obtaining a uniform grievance process for non-union state employees.

Rep. Brandewie moved DO PASS on HB 718. Rep. Driscoll made a substitute DO NOT PASS motion. The bill was killed with a 12-8 vote.

The committee then went out of executive session and proceeded with a discussion of HB 85.

Rep. Jenkins closed by saying that HB 707 was drafted with the intention of protecting both plumbers and the rural public.

Hearing on HB 707 was closed.

HOUSE BILL 662: Rep. Kerry Keyser, District 74, introduced this measure, which he sponsored. He said that HB 662 is basically a clarification of the Securities Act, defining when a securities transaction takes place in Montana, and when the Montana securities department has jurisdiction over such a transaction.

Kim Schulke, staff attorney for the securities department of the state auditor's office, spoke in support of the legislation. A copy of her testimony is attached hereto as Exhibit 3.

There were no further proponents, and no opponents. Rep. Keyser waived a closing statement. There were no questions from committee.

HOUSE BILL 618: Rep. Jack Sands, District 90, introduced HB 618, which he sponsored. He said that he was not requested to introduce the measure, but did so because he thought it was a good idea to change the legal interest rate from 6% to 10%, which would more accurately reflect "economic reality." He explained that the interest rate wold apply when interest on an obligation is not specifically expressed in the terms of that obligation.

There were no further proponents nor opponents. Rep. Driscoll asked Rep. Sands for an example of when the proposed interest rate would apply. Rep. Sands said an example would be when an award, with interest, is granted as a result of a lawsuit. He further explained that although 10% was not a figure he would refuse to change, he did not want the committee to recommend a sliding interest rate because that would invite continuing lawsuits to determine interest.

Hearing was closed on HB 618.

HOUSE BILL 658: House Bill 658 was introduced in committee by sponsor Jack Ramirez, District 87. He explained that the same legislation was on the books in 1977, and was extended for two years in 1979. The purpose of HB 658, he explained, is to allow health care providers to get liability insurance if insurance companies in the state quit writing policies. He said that HB 658 would be temporary and self-sustaining, with fees generated covering the costs.

is received and the policy is paid. A copy of his testimony is attached hereto as Exhibit 5.

There being no further opponents, Rep. Schultz closed. He said he has no vested interest in the issue, but feels that the state should consider and adopt a uniform standard for insurance companies to follow in cancelling policies.

Hearing was closed on HB 567, and the committee went into executive session to act on bills heard.

EXECUTIVE SESSION

HOUSE BILL 85: Rep. Thomas moved DO PASS on HB 85. The motion carried, with Reps. Pavlovich, Hart and Nesbit voting no.

HOUSE BILL 606: Rep. Wallin moved DO PASS on HB 606, which carried unanimously.

HOUSE BILL 618: Rep. Brandewie moved DO PASS on HB 618, which carried unanimously.

HOUSE BILL 658: Rep. Kitselman moved DO PASS on HB 658, which carried unanimously.

HOUSE BILL 662: Rep. Kitselman moved DO PASS on the proposed amendments to HB 662, which carried unanimously. He then moved DO PASS on HB 662 as amended, which also carried unanimously.

HOUSE BILL 707: The committee agreed to hold HB 707 until it received the anticipated "plumbers' bill."

HOUSE BILL 759: Rep. Thomas moved DO PASS on HB 759, which passed unanimously.

HOUSE BILL 718: Rep. Kitselman made a MOTION TO RECONSIDER the committee's earlier action on HB 718. That motion was carried 11-9 on a roll call vote. (See attached record.) Rep. Kitselman then proposed a DO PASS motion on the amendments proposed for HB 718 by the Dept. of Administration. The motion on amendments was approved in a voice vote, with Reps. Bachini, Driscoll, Nisbet and Pavlovich opposed.

Rep. Kadas moved to amend HB 718 by striking the new language that had been inserted on page 3, lines 8-11. That motion carried unanimously.

Exhibit 3
2/13/85

TO: Business & Labor Committee

FROM: Kim Schulke, Staff Attorney
State Auditor's Office - Securities Department

RE: HB 662, an act defining the scope of the Securities Act of Montana.

The Securities Act of Montana is based on three public policies:

1. to protect the investor, persons engaged in securities transactions, and the public interest;
2. to promote uniformity among the states; and
3. to encourage, promote and facilitate capital investment in Montana.

The scope of the securities act should further these public policies. The scope of the Act is not currently set forth by statute although the Montana Securities Department has construed the Act in accordance with the language from the Uniform Securities Act as set forth in HB 662. In order to inform those involved in securities transactions within Montana, as to the scope of our act, the Department is seeking to have this scope language enacted into law.

Based upon the previously cited public policies, the drafters of the Uniform Securities Act elected to limit the scope of that Act to those transactions which took place at least partially within the state. Citizenship or residence within a particular state was rejected as a policy basis for the application of the securities act in favor of a territorial base requiring that the transaction have some physical nexus with the state. Thus, the offer, sale or purchase of the security must originate from the state or be directed into the state.

HB 662 defines when a transaction takes place "in this state."

Subsections 1 and 2 contain the two major provisions of the bill. The remaining subsections are merely explanatory provisions supporting and creating certain exceptions from the main provisions..

The difference between subsections 1 and 2 lies in the side of the transaction they control. Subsection 1 deals with persons involved in the offering for sale and sale of securities. Subsection 2, on the other hand, controls persons involved in the offering to buy or the purchase of securities. Thus, subsections 1 and 2 are complementary sections. In a normal transaction which takes place entirely within a state, subsection 1 will control the seller and all his agents, and subsection 2 will control the purchaser and all his agents.

The major substantive difference between the two subsections is the breadth of coverage under the Act to which the parties are subject. Under subsection 1 the offeror, the seller, or their agents are subjected to the full coverage of the Act. Thus, they must comply with the antifraud, the broker-dealer and agent registration, and securities registration provisions, as well as the provisions prohibiting statements that review by the Securities Department constitutes a recommendation of the securities, or that the Department has passed on the merits or qualifications of the securities. Furthermore, the seller or his agents are subjected to the civil liability provision under the Act.

On the other hand, under subsection 2, a person offering to purchase, a purchaser, or their agents are subjected only to the antifraud, broker-dealer registration, and antirecommendation provisions of the Act.

The reason for the distinction in treatment between subsections 1 and 2 lies in the policy and organization of the Act. Under the Act, compliance with the registration provisions always falls upon the seller of the securities, never the purchaser. Obviously then, the purchaser can never be liable for failing to register the securities. Thus, there is no need to subject purchasers under subsection 2 to the coverage of the registration sections. This still leaves the possibility of liability for material omissions or misrepresentations.

The most obvious situation where an offer to sell is made in the state is when both parties to the transaction are physically present within the state and the entire negotiation and transfer of the security takes place there. The Act does not apply in the converse situation where neither party is physically in the state and none of the negotiations nor the transfer of the securities takes place within the state, even though one or more of the parties is a resident of the state.

The applicability of the securities act becomes much more complicated when one of the parties is not physically within the state and either uses a local agent or directs written or oral communications to or from the state, or where a part of the transaction takes place elsewhere. Subsection 3 applies to this situation.

The simplest transaction under subsection 3 is where the person offering the securities for sale directs a written offer into Montana or calls into Montana. The state has an interest in protecting its residents from such uncontrolled transactions and therefore the Securities Act of Montana applies.

Subsection 3 also provides that an offer or sale shall be governed by our securities act if the offer or sale originates in this state. The amendment proposed by the securities department is consistent with this idea but it excepts the securities registration statute from the operation of the act when offers originate in Montana but are accepted outside the state.

The rationale for subsection 3 is that a state has an interest in seeing that its territory is not used as a base of operations to conduct illegal sales in other states.

Subsection 4 outlines when an acceptance is considered to have been "made in this state." There are two conditions which must be met before an acceptance will be considered "made in this state." First, the acceptance must be communicated to the offerer within the state. Second, there must not have been an earlier acceptance communicated to the offerer outside the state.

The most clear-cut application of subsection 4 arises when both the buyer and seller are physically present in Montana and the entire transaction takes place here. The acceptance is considered to have been made here because the seller is located here, he makes his acceptance here and communicates his acceptance from here to the buyer who is here.

Thus, before the seller can accept the offer to buy, even though it may have been totally unsolicited, he will have to register the securities in question or will have to qualify them for an exemption.

Subsection 5 applies to the use of various means of mass communications such as magazines, newspapers, and radio and television broadcasts as a vehicle for the dissemination of offers to buy or sell securities. The placing of an ad in one of these publications or broadcast constitutes the making of an offer through the agency of the publication or broadcaster.

Without subsection 5, an out-of-state promoter would become subject to the securities registration requirements of our act by placing an ad in a Montana newspaper or arranging for an ad to be broadcast by a local radio or television station.

An ad in a truly local newspaper is an offer in the state in which the paper is published if one-third of the circulation is also made within that state.

Subsection 5 also solves the problem of the unintended circulation of essentially local papers beyond the state of their original publication by simply providing that the ads contained in such papers do not constitute offers in states in which the paper is not published. Again, this is in keeping with the idea that an advertiser ought not, at his peril, to be required to determine beforehand every state into which the paper might circulate a copy. The unintended circulation by others, is covered by the last clause of subsection 5, making unknown and unintended additional circulation not an offer in the second state.

Subsection 6 provides that the Montana Securities Act applies to investment advisers when any act instrumental in the furtherance of prohibited conduct is done in this state.

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/13/85

NAME Bob Pavlovich	PRESENT	ABSENT	EXCUSED
Les Kitselman	X		
Bob Bachini	X		
Ray Brandewie	X		
Jan Brown	X		
Jerry Driscoll	X		
Robert Ellerd	X		
William Glaser	X		
Stella Jean Hansen	X		
Marjorie Hart	X		
Ramona Howe	X		
Tom Jones	X		
Mike Kadas	X		
Vernon Keller	X		
Lloyd McCormich	X		
Jerry Nisbet	X		
James Schultz	X		
Bruce Simon	X		
Fred Thomas	X		
Norm Wallin	X		

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 662 DATE February 13, 1985

SPONSOR Representative Keyser

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Tom Schulke	State Auditor - Securities Dept	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

February 13 19 85

MR. SPEAKER:

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 662

FIRST reading copy (WHITE)
color

AN ACT DEFINING THE SCOPE OF THE SECURITIES ACT OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Respectfully report as follows: That HOUSE Bill No. 662

BE AMENDED AS FOLLOWS:

1) Page 1, line 25
Following: "offer"
Insert: ", but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state"

AND AS AMENDED,

DO PASS

BOB PAVLOVICH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

CHAIRMAN--HALLIGAN, MIKE
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON
SECRETARY-DUVAL, CAROL

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0567	3/05	3/21	3/26	CONCUR AS AMENDED		3/26
SCHULTZ, JAMES M.			REQUIRE WRITTEN NOTICE OF CANCELLATION OF LIFE & HEALTH INSURANCE POLICIES			
HB0568	3/04	3/07		CONCUR		3/7
MOORE, JACK K.			7-DAY CREDIT LIMIT ON TOBACCO SALES			
HB0571	3/08	3/20	3/25 3/27	CONCUR AS AMENDED		3/27
BERGENE, TONI R.			MANDATORY LICENSING & REGULATION OF PROFESSIONAL COUNSELORS			
HB0574	2/19	3/18	3/27	CONCUR AS AMENDED		3/27
THOMAS, FRED			LETS PUBLIC UTILITIES CORRECT CUSTOMER BILLING ERRORS BY BACKBILLING 6 MOS.			
HB0577	2/22	3/14	3/21	CONCUR AS AMENDED		3/21
BRADLEY, DOROTHY			DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITION			
HB0598	2/21	3/26	3/27	ADVERSE REPORT		3/27
ASAY, TOM			GIVES PETROLEUM WHOLESALE DISTRIBUTORS SEMI-ANNUAL OPTION ON PRODUCT MEASURE			
HB0602	2/13	3/13	3/14 3/19	CONCUR AS AMENDED		3/19
FRITZ, HARRY			ARTIST-ART DEALER RELATIONSHIP			
HB0606	2/21	3/21		CONCUR		3/21
CAMPBELL, BUD			CLARIFY LAWS ON SALE & DISTRIBUTION OF MOTOR VEHICLES; PROVIDE CIVIL PENALTY			
HB0618	2/19	3/15		CONCUR		3/15
SANDS, JACK			TO RAISE THE LEGAL INTEREST RATE FROM SIX PERCENT TO TEN PERCENT			
HB0658	2/21	3/21		CONCUR		3/21
RAMIREZ, JACK			CREATE JOINT UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE			
HB0662	2/21	3/21		CONCUR		3/21
KEYSER, KERRY R.			DEFINING SCOPE OF MONTANA SECURITIES LAW			

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 21, 1985

The forty-third meeting of the Business & Industry Committee met on March 21, 1985 in Room 410 of the Capitol Building at 10 a.m. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: The members of the committee were all present except for Senator Neuman who was excused.

CONSIDERATION OF HOUSE BILL 567: Representative James Schultz, House District #30, Lewistown, is the chief sponsor of this measure which would require life and disability insurance companies to send written cancellation notices before cancelling a policy for nonpayment of premiums. He had talked with several constituents and felt this was a problem that needed to be addressed. He noted this is patterned after model legislation passed in 16 states. (EXHIBIT 1)

PROPONENTS: There were none.

OPPONENTS: There were none.

Questions were then called for. Senator Halligan wondered just which policies this measure would cover and was told by Rep. Schultz policies that were primarily annual premiums. He felt it would affect 10 to 25% of the total policies that are currently issued. He was concerned about the 6 month hospital insurance policies but felt that they could not be addressed in this act.

Senator Thayer wondered if there was a way of giving notice on policies that are paid on a monthly basis. He felt the bill should stipulate that in no event can any policy be cancelled without some notification. Rep. Schultz stated he would support any efforts to check into this situation further. He then closed the hearing on House Bill 567.

CONSIDERATION OF HOUSE BILL 606: Representative Bud Campbell, House District #48, Deer Lodge, is the chief sponsor of this measure which he noted was done upon the request of the Department of Justice, Motor Vehicle Division. It would revise and clarify the laws pertaining to the sale and distribution of motor vehicles, establish administrative penalties and amend some sections of the current law. He explained that current law requires a motor vehicle dealer to have a sign indicating the firm name and headquarters at the principal place of business. However this can be confusing when the dealer has a completely different type of business at that location such as a motel or a restaurant. He felt it was reasonable to have a sign to indicate that a dealer has autos for sale. He indicated too that the bill would clearly authorize the divison to check dealer records to insure compliance with the law.

PROPONENTS: Larry Majerus, Administrator of the Motor Vehicle

concern the medical profession may not be able to obtain liability insurance. This measure would just mandate a joint underwriting association to write liablity insurance policies to health care professionals on a cost basis. It would be a stopgap measure and would have a termination date.

PROPONENTS: Jerome Loerndorf, representing the Montana Medical Association, stated this measure would only go into operation after a hearing had been held and the commission had been assured that there was no liability insurance available to health care specialists. He noted the rates keep going up all the time and the costs are getting to be prohibitive. Currently the rate in Montana is averaging $16,000 per year. He noted doctors and hospitals are very reluctant to operate without this type of insurance.

OPPONENTS: There were none.

Questions were then called for from committee members. Senator Christiaens wondered if this would be an assigned risk pool and Rep. Ramirez stated this was not. Rep. Ramirez noted that Aetna Insurance left the state this past year because of the area and the poor risk factor. He was also asked if there were physicians practicing in the state without coverage and he felt there probably were.

Senator Gage felt that with this measure and the punitive damages bill that it might help this situation but if the rates continue to rise it will be extremely difficult for doctors to pay these premiums.

Senator Goodover wondered if those who serve on foundation boards and have money invested in a hospital could be held personally responsible and wondered if insurance could be available to cover these type of situations also. Jerome Loerndorf explained the problem is very broad and today more and more people are suing and the rates are going to continue to rise.

Senator Halligan wondered when a determination would be made that insurance was unavailable and was told it would be when there was a total unavailability of liability insurance. He wondered also why only two years. Rep. Ramirez stated this was only a stopgap measure and felt there might be some other alternative in the future. Senator Gage wondered if this measure had helped to drive insurance companies away when it was in effect before and Rep. Ramirez felt it did not have that much effect. He then closed the hearing on House Bill 658.

CONSIDERATION OF HOUSE BILL 662: Representative Kerry Keyser, House District #74, Madison County, is the chief sponsor of this bill which is an act to define the scope of the securities act of Montana and provides an immediate effective date. He stated it had been requested by the auditor's office. He noted the language had been taken from a uniform security act which has been adopted in over 40 states. He noted sub-section 1 regulates

persons involved in the offering of sales for securities, sub-section 2 regulates persons offering to buy securities, sub-section 3 regulates when an offer to buy or sell takes place in Montana and sub-section 4 sets forth when an offer to buy or sell is accepted in this state. Sub-section 5 discusses when an offer to buy or sell securities is made through the use of the media and sub-section 6 states that this act applies to investments advisors.

PROPONENTS: J. Kim Schulke, Staff Attorney for the State Auditor's office, explained this law protects the investor and promotes uniformity among the states and encourages capital investment in Montana. She submitted a written statement on the auditor's policies. (EXHIBIT 3)

Questions were then called for from the committee members. Senator Halligan asked Kim Schulke to explain the definition of a security. She noted this is very complex but is covered in Sec. 30-10-103. Senator Christiaens wondered about the territorial base for a transaction and was told the act does not apply if none of the transaction occurred in the state. Representative Keyser then urged adoption of this measure and the hearing was closed on House Bill 662.

DISPOSITION OF HOUSE BILL 662: Senator Gage MOVED TO CONCUR IN HOUSE BILL 662. The motion carried. Senator Halligan will carry this on the Senate floor.

DISPOSITION OF HOUSE BILL 658: Senator Christiaens then MOVED THAT HOUSE BILL 658 BE CONCURRED IN. The motion carried. Senator Christiaens will carry the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 606: Senator Thayer MOVED THAT HOUSE BILL 606 BE CONCURRED IN. The motion carried. Senator Boylan voted "no". Senator Thayer will carry the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 183: Senator Weeding MOVED THAT HOUSE BILL 183 BE CONCURRED IN. Senator Boylan then made a SUBSTITUTE MOTION THAT HOUSE BILL 183 NOT BE CONCURRED IN. He felt the bill should be written differently. Senator Gage felt that passage of this measure would just make people more antagonistic and felt that most people would cooperate if asked to refrain from smoking anyway. Senator Thayer felt the bill needed some work but respected the rights of those who would like cleaner air. Senator Williams opposed the measure because he felt small restaurants in rural areas would have trouble complying with these regulations. Senator Christiaens felt the fact this is optional now is something in its favor and would not like to see something become mandatory. On the motion TO NOT BE CONCURRED IN, Senator Christiaens, Senator Halligan, Senator Kolstad, and Senator Fuller voted "no". It was then noted that Senator Neuman had left his vote for this bill and this caused the motion to fail.

Senator Gage then MOVED THAT HOUSE BILL 183 BE TABLED. Senator Kolstad and Senator Halligan voted "no". This motion carried.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 3/21/85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	E		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

EXHIBIT 3
BUSINESS & INDUSTRY
March 21, 1985

TO: SENATE BUSINESS & INDUSTRY COMMITTEE

FROM: KIM SCHULKE, STAFF ATTORNEY
STATE AUDITOR'S OFFICE
SECURITIES DEPARTMENT

RE: HB 662, AN ACT DEFINING THE SCOPE OF THE SECURITIES ACT OF MONTANA

The Securities Act of Montana is based on three public policies:

1. To protect the investor, persons engaged in securities transactions, and the public interest;

2. To promote uniformity among the states; and

3. To encourage, promote and facilitate capital investment in Montana.

The scope of the Securities Act should further these public policies. The scope of the Act is not currently set forth by statute although the Montana Securities Department has construed the Act in accordance with the language from the Uniform Securities Act as set forth in HB 662. In order to inform those involved in securities transactions within Montana, as to the scope of our Act, the Department is seeking to have this scope language enacted into law.

Based upon the previously cited public policies, the drafters of the Uniform Securities Act elected to limit the scope of that Act to those transactions which took place at least partially within the state. Citizenship or residence within a particular state was rejected as a policy basis for the application of the Securities Act in favor of a territorial base requiring that the transaction have some physical nexus with the state.

HB 662 defines when a transaction takes place "in this state."

Subsections 1 and 2 contain the two major provisions of the bill. The remaining subsections are merely explanatory provisions supporting and creating certain exceptions from the main provisions.

The difference between subsections 1 and 2 lies in the side of the transaction they control. Subsection 1 deals with persons involved in the offering for sale and sale of securities. Subsection 2, on the other hand, controls persons involved in the offering to buy or the purchase of securities. Thus, subsections 1 and 2 are complementary sections. In a normal transaction which takes place entirely within a state, subsection 1 will control the seller and all his agents, and subsection 2 will control the purchaser and all his agents.

The major substantive difference between the two subsections is the breadth of coverage under the Act to which the parties are subject. Under subsection 1, the offeror, the seller, or their agents are subjected to the full coverage of the Act. Thus, they must comply with the antifraud, the broker-dealer and agent registration, and securities registration provisions, as well as the provisions prohibiting statements that review by the Securities Department constitutes a recommendation of the securities, or that the Department has passed on the merits or qualifications of the securities. Furthermore, the seller or his agents are subjected to the civil liability provision under the Act.

On the other hand, under subsection 2, a person offering to purchase, a purchaser, or their agents are subjected only to the antifraud, broker-dealer registration, and anti-recommendation provisions of the Act.

The reason for the distinction in treatment between subsections 1 and 2 lies in the policy and organization of the Act. Under the Act, compliance with the registration provisions always falls upon the seller of the securities, never the purchaser. Obviously then, the purchaser can never be liable for failing to register the securities. Thus, there is no need to subject purchasers under subsection 2 to the coverage of the registration sections. This still leaves the possibility of liability for material omissions or misrepresentations.

The most obvious situation where an offer to sell is made in the state is when both parties to the transaction are physically present within the state and the entire negotiation and transfer of the security takes place there. The Act does not apply in the converse situation where neither party is physically in the state and none of the negotiations nor the transfer of the securities takes place within the state, even though one or more of the parties is a resident of the state.

The applicability of the Securities Act becomes much more complicated when one of the parties is not physically within the state and either uses a local agent or directs written or oral communications to or from the state, or where a part of the transaction takes place elsewhere. Subsection 3 applies to this situation.

The simplest transaction under subsection 3 is where the person offering the securities for sale directs a written offer into Montana or calls into Montana. The state has an interest in protecting its residents from such uncontrolled transactions and therefore the Securities Act of Montana applies.

Subsection 3 also provides that an offer or sale shall be governed by our Securities Act if the offer or sale originates in this state. The amendment proposed by the Securities Department is consistent with this idea but it excepts the securities registration statute from the operation of the Act when offers originate in Montana but are accepted outside the state.

The rationale for subsection 3 is that a state has an interest in seeing that its territory is not used as a base of operations to conduct illegal sales in other states.

Subsection 4 outlines when an acceptance is considered to have been "made in this state." There are two conditions which must be met before an acceptance will be considered "made in this state." First, the acceptance must be communicated to the offeror within the state. Second, there must not have been an earlier acceptance communicated to the offeror outside the state.

The most clear-cut application of subsection 4 arises when both the buyer and seller are physically present in Montana and the entire transaction takes place here. The acceptance is considered to have been made here because the seller is located here, he makes his acceptance here and communicates his acceptance from here to the buyer who is here.

Thus, before the seller can accept the offer to buy, even though it may have been totally unsolicited, he will have to register the securities in question or will have to qualify them for an exemption.

Subsection 5 applies to the use of various means of mass communications such as magazines, newspapers, and radio and television broadcasts as a vehicle for the dissemination of offers to buy or sell securities. The placing of an ad in one of these publications or broadcast constitutes the making of an offer through the agency of the publication or broadcaster.

Without subsection 5, an out-of-state promoter would become subject to the securities registration requirements of our Act by placing an ad in a Montana newspaper or arranging for an ad to be broadcast by a local radio or television station.

An ad in a truly local newspaper is an offer in the state in which the paper is published if one-third of the circulation is also made within that state.

Subsection 5 also solves the problem of the unintended circulation of essentially local papers beyond the state of their original publication by simply providing that the ads contained in such papers do not constitute offers in states in which the paper is not published. Again, this is in keeping with the idea that an advertiser ought not, at his peril, to be required to determine beforehand every state into which the paper might circulate a copy. The unintended circulation by others, is covered by the last clause of subsection 5, making unknown and unintended additional circulation not an offer in the second state.

Subsection 6 provides that the Montana Securities Act applies to investment advisers when any act instrumental in the furtherance of prohibited conduct is done in this state.

JKS2/lmA34

DATE March 21 1985

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
J. Tim Schulke	State Auditor, Securities Dpt	HB662	✓	
Brian Zins	Utt. Medical Assn	HB658	✓	
Larry Major	Motor Vehicle Div	HB604	✓	

STANDING COMMITTEE REPORT

MARCH 21 19 85

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 662

third reading copy (blue color)

DEFINING SCOPE OF MONTANA SECURITIES LAW
(Halligan)

Respectfully report as follows: That HOUSE BILL No. 662

BE CONCURRED IN

~~XXXXXXX~~

~~XXXXXXXXX~~
~~DO NOT PASS~~

Sen. Mike Halligan
Chairman.

HOUSE BILL NO. 662

INTRODUCED BY KEYSER, RAMIREZ, IVERSON

BY REQUEST OF THE SECURITIES DIVISION OF THE STATE AUDITOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE SCOPE OF THE SECURITIES ACT OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, BUT FOR THE PURPOSE OF 30-10-202, AN OFFER TO SELL WHICH IS NOT DIRECTED TO OR RECEIVED BY THE OFFEREE IN THIS STATE IS NOT MADE IN THIS STATE.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside

REFERENCE BILL

this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 30, chapter 10, parts 1 through 3, and the provisions of Title 30, chapter 10, parts 1 through 3, apply to section 1.

Section 3. Extension of authority. Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. Effective date. This act is effective on passage and approval.

-End-